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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 SPACE DATA CORPORATION,

19 Plaintiff,

20 v.

21 ALPHABET INC., and GOOGLE LLC,

22 Defendants.
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Case No. 5:16-cv-03260-BLF (NC)

**STIPULATED ORDER RE:
DISCOVERY OF EMAILS**

Mag. Judge: Hon. Nathanael M. Cousins
Date Filed: June 13, 2016
Trial Date: August 5, 2019
Courtroom: 7, Fourth Floor

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production with respect to emails to promote a
4 “just, speedy, and inexpensive determination of this action, as required by Federal Rule of
5 Civil Procedure 1.”

6 2. This Order may be modified in the Court’s discretion or by stipulation.

7 3. As in all cases, costs may be shifted for disproportionate email ESI production
8 requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive
9 or dilatory discovery tactics are cost-shifting considerations.

10 4. A party’s meaningful compliance with this Order and efforts to promote
11 efficiency and reduce costs will be considered in cost-shifting determinations.

12 5. The parties are expected to comply with the District’s E-Discovery Guidelines
13 (“Guidelines”) and are encouraged to employ the Checklist for Rule 26(f) Meet and Confer
14 regarding Electronically Stored Information.

15 6. A producing party, absent agreement or order to the contrary, may limit its
16 search for responsive documents to the requesting party’s requests for production, with
17 respect to emails only,¹ to a total of twelve mutually agreed custodians. The parties may
18 jointly agree to modify this limit without the Court’s leave. The Court shall consider
19 contested requests for additional email custodians, upon showing a distinct need based on the
20 size, complexity, and issues of this specific case. Cost-shifting may be considered as part of
21 any such request.

22 7. A producing party, absent agreement or order to the contrary, may limit its
23 search for responsive documents to the requesting party’s requests for production, with
24 _____

25 ¹ This Order does not govern discovery of ESI other than emails and other forms of
26 electronic communications such as instant messaging (collectively, “non-email ESI”). The
27 search and production of non-email ESI is governed by the Stipulated Order Re: Discovery
28 of Electronically Stored Information.

1 respect to emails only, to a total of twelve mutually agreed search terms. The parties may
2 jointly agree to modify the twelve email search term limit, and the terms, without the Court's
3 leave. The Court shall consider contested requests for additional email search terms, upon
4 showing a distinct need based on the size, complexity, and issues of this specific case. The
5 parties shall cooperate to identify proper search terms and shall confer on a process to test the
6 efficacy of email search terms. As to the agreed email search terms, the parties agree to meet
7 and confer in good faith with respect to replacing any email search term a party believes in
8 good faith to be unworkable following testing results. In general, the search terms shall be
9 narrowly tailored to particular issues; indiscriminate terms, such as the producing company's
10 name or its product name, are inappropriate unless combined with narrowing search criteria
11 that sufficiently reduce the risk of overproduction; a conjunctive combination of multiple
12 words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as a
13 single search term; a disjunctive combination of multiple words or phrases (*e.g.*, "computer"
14 or "system") broadens the search, and thus each word or phrase shall count as a separate
15 search term unless they are variants of the same word; and use of narrowing search criteria
16 (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production and shall be considered
17 when determining whether to shift costs for disproportionate discovery.

18 8. Nothing in this Order prevents the parties from agreeing to use technology-
19 assisted review and other techniques insofar as their use improves the efficacy of discovery.
20 Such topics should be discussed pursuant to the District's E-Discovery Guidelines.

21 9. Nothing in this Order requires a party to disclose irrelevant information or
22 relevant information that is protected by the attorney-client privilege, the attorney work-
23 product doctrine, or any other applicable privilege or immunity. The parties do not waive
24 any objections to the production, discoverability, admissibility or confidentiality of any
25 documents or ESI.

26 **IT IS SO STIPULATED**, through Counsel of Record.

27 Dated: February 1, 2018

HOSIE RICE LLP

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/s/ Lyndsey C. Heaton
LYNDSEY C. HEATON

Attorneys for Plaintiff
SPACE DATA CORPORATION.

Dated: February 1, 2018 KEKER, VAN NEST & PETERS LLP

/s/ Matthew M. Werdegarr
MATTHEW M. WERDEGAR

Attorneys for Defendants
ALPHABET INC., GOOGLE LLC

ATTESTATION

I hereby attest pursuant to Civil Local Rule 5-1(i)(3) that concurrence in the
electronic filing of this document has been obtained from the other signatories.

Dated: February 1, 2018, /s/ Lyndsey C. Heaton
LYNDSEY C. HEATON

ORDER

IT IS ORDERED that the forgoing Agreement is approved.

Dated: February 2, 2018

HON. NATHANAELE M. COUSINS
UNITED STATES MAGISTRATE JUDGE

